

No. 01-20-00004-CR & No. 01-20-00005-CR

In the Court of Appeals for the
First District of Texas at Houston

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
9/1/2020 10:55:13 AM
CHRISTOPHER A. PRINE
Clerk

Ex parte

JOSEPH ERIC GOMEZ,
Appellant

On Appeal from Trial Court Case No. 1657519 and 1657521
Before the 338th Judicial District Court of Harris County, Texas

**APPELLANT'S SUPPLEMENT TO HIS MOTION TO
DESIGNATE OPINION FOR PUBLICATION**

TO THE HONORABLE COURT OF APPEALS:

JOSEPH ERIC GOMEZ, Appellant before this Court, by and through undersigned counsel, pursuant to Rule 47.2(b), Texas Rules of Appellate Procedure, submits the following supplemental information in support of his Motion to Designate Opinion for Publication previously filed with this Court.

1. On August 31, 2020, the trial court held a hearing in Appellant's cases after this Court ordered that its mandate be recalled. Despite Appellant presenting evidence that he had not been a flight risk or danger to the community in the more than 3 weeks that he had been released from custody, despite being present for the hearing as ordered by the trial court, and despite Appellant's argument that the trial court was bound to follow this Court's opinion, the trial court nevertheless revoked Appellant's bonds, set his bail back at \$75,000 on each case, and ordered Appellant to be remanded back into custody. The trial court also denied Appellant's request, pursuant to Article 44.35, Texas Code of Criminal Procedure, that he be permitted to remain free on a \$150,000 personal bond while the appeal in this case is pending. Later that day, Appellant voluntarily surrendered himself at the Harris County Jail and went back into custody.
2. Presently at issue here is whether the trial court is under the obligation to follow this Court's opinion of August 7, 2020. Based on arguments made by the State at the hearing before the trial court and statements made by the trial court, their position is that the

trial court is not obligated to follow this Court's decision because it was not designated for publication and is not final.

3. As Applicant previously pointed out in his original motion, he maintains that Rule 47.7(a) only applies in appellate proceedings and not in proceedings before a trial court. Before this trial court (and other trial courts in this Court's jurisdiction), Appellant maintains that the principle of vertical *stare decisis* applies and binds a trial court to follow the law as this Court has interpreted it in its opinion. However, as the Court of Criminal Appeals recently noted in *dicta*, a court of appeals' "decision to not publish its opinion reflects its intent to not establish a precedent." *Williams v. State*, 603 S.W.3d 439, 444 (Tex. Crim. App. 2020).
4. Appellant continues to maintain that this Court needs to remove any ambiguity over this issue by designating its opinion for publication. Just yesterday, while waiting in the trial court's courtroom prior to Appellant's hearing, undersigned counsel for Appellant witnessed four defendants released on bail appear before the trial court. Without counsel, notice, or a record of the proceedings, counsel observed the trial court review the probable cause read by

the State and *sua sponte* revoke each of their bonds finding them to be “insufficient” without any stated reason or other new evidence being presented. Unsworn declarations from two of the defendants, taken after they were remanded into custody, are attached hereto as additional exhibits to Appellant’s original motion.

5. Appellant further submits that the interests of justice demand this Court to take the requested action. Defendants like those whose bonds were revoked yesterday and those referenced in his original motion should not have to go through the rigorous, lengthy process of seeking habeas relief (which undoubtedly would be denied by the trial court) like Appellant did and then seek appellate review to have the same outcome as Appellant’s case over and over again.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests this Court to designate the opinion issued by this Court in his case for publication.

Respectfully Submitted,

MAYR LAW, P.C.

by: /s/ T. Brent Mayr

T. Brent Mayr

SBN 24037052
bmayr@mayr-law.com

by: /s/ Sierra Tabone
Sierra Tabone
SBN 24095963
stabone@mayr-law.com

5300 Memorial Dr., Suite 750
Houston, TX 77007
713.808.9613
713.808.9991 FAX

SCHNEIDER & MCKINNEY, PLLC

by: /s/ Stanley G. Schneider
Stanley G. Schneider
SBN 17790500
440 Louisiana, Suite 800
Houston, TX 77002
713-951-9994
713-224-6008 FAX
stans3112@aol.com

ATTORNEYS FOR
JOSEPH ERIC GOMEZ

VERIFICATION

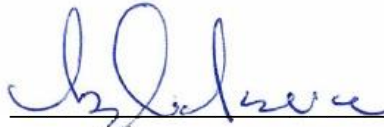
As required by Texas Rule of Appellate Procedure 10.2, on this date personally appeared THOMAS "BRENT" MAYR, who upon being duly sworn, stated as follows:

My name is THOMAS "BRENT" MAYR. I have read the foregoing motion, and the facts stated therein are within my personal knowledge and are true and correct.

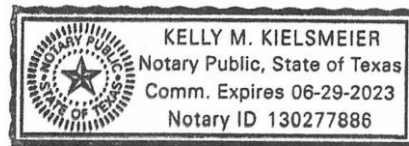


THOMAS "BRENT" MAYR
ATTORNEY FOR JOSEPH GOMEZ

SWORN TO AND SUBSCRIBED before me on this 1st day of
September, 2020.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on September 1, 2020.

/s/ T. Brent Mayr
T. Brent Mayr
ATTORNEY FOR
JOSEPH ERIC GOMEZ

Exhibit 10

Unsworn Declaration of Samone McClure,
Defendant in the case, *State of Texas v. Samone McClure*
Case nos. 1688068 & 1688069 in the 338th District Court of Harris
County, Texas

STATE OF TEXAS

HARRIS COUNTY

§
§
§

UNSWORN DECLARATION

Before me, the undersigned authority, personally appeared **SAMONE McCLURE** who being by me duly sworn, deposed as follows:

"My name is **SAMONE McCLURE**. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I am the defendant charged in cause numbers 1688068 and 1688069 pending in the 338th District Court of Harris County, Texas. On August 29, 2020, I was arrested and charged with the felony offenses of driving while intoxicated with child passenger and assault on a public servant. At the jail, I was informed that I was being released on personal bonds in the amount of \$1,500 and \$20,000, respectively, and I was subsequently released from custody.

As I was instructed to on my bond paperwork, I appeared in person in the 338th District Court on the morning on August 31, 2020. The bailiffs brought me into the courtroom. I did not have an attorney with me. I was led before a television monitor which had Judge Franklin appeared by videoconference. I listened as the prosecutor read a summary about my case. The judge then informed me that she was finding my bond to be insufficient, revoked my bonds, and put me back into custody. Surprised, I asked, "I am going back into custody?" and was taken back into the holdover by the bailiffs.

JURAT:

My name is Samone McClure, my date of birth is 6/27/1989, my SPN is 02483614. I am presently incarcerated in a holdover cell in the custody of the Harris County Sheriff's Office adjacent to the courtroom for the 338th District Court located at 1201 Franklin, 15th

Floor, Houston, Texas 77007. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 31 day of Aug., 2020.


Declarant"

Exhibit 10

Unsworn Declaration of Tea Moret Gradney,
Defendant in the case, *State of Texas v. Tea Moret Gradney*
Case no. 1688117 in the 338th District Court of Harris County, Texas

STATE OF TEXAS
HARRIS COUNTY

§
§
§

UNSWORN DECLARATION

Before me, the undersigned authority, personally appeared ~~TEA MOREY~~ ^{MORET}
GRADNEY who being by me duly sworn, deposed as follows:

"My name is ~~TEA MOREY~~ ^{MORET} GRADNEY. I am over 18 years of age, of sound mind,
capable of making this affidavit, and personally acquainted with the facts herein stated.

I am the defendant charged in cause number 1688117 pending in the 338th District
Court of Harris County, Texas. On August 30, 2020, I was arrested and charged with the
felony offense of injury to an elderly. At the jail, I appeared before a magistrate who set my
bail at \$3,000. I made arrangements to have that bond posted and I was released from
custody.

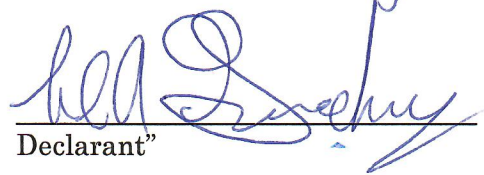
As I was instructed to on my bond paperwork, I appeared in person in the 338th
District Court on the morning on August 31, 2020. The bailiffs brought me into the courtroom.
I did not have an attorney with me. I was led before a television monitor which had Judge
Franklin appeared by videoconference. I listened as the prosecutor read a summary about
my case. The judge then informed me that she was finding my bond to be insufficient, revoked
my bonds, and put me back into custody. I tried to ask why my bond was being revoked but
the bailiff told me that I could not say anything, that I was going into custody, and that I
needed to go with her. She led me back into .

JURAT:

My name is Tea Morey Gradney, my date of birth is 8/7/1997, my SPN is 03064728. I
am presently incarcerated in a holdover cell in the custody of the Harris County Sheriff's
Office adjacent to the courtroom for the 338th District Court located at 1201 Franklin, 15th

Floor, Houston, Texas 77007. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 31 day of August, 2020.


Declarant"

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Thomas Mayr
Bar No. 24037052
bmayr@mayr-law.com
Envelope ID: 45867854
Status as of 9/1/2020 11:03 AM CST

Associated Case Party: Joseph Gomez

Name	BarNumber	Email	TimestampSubmitted	Status
Stanley G. Schneider	17790500	stans3112@aol.com	9/1/2020 10:55:13 AM	SENT
Sierra Tabone	24095963	stabone@mayr-law.com	9/1/2020 10:55:13 AM	SENT

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Clint Morgan		morgan_clinton@dao.hctx.net	9/1/2020 10:55:13 AM	SENT